

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In Re:

Case Nos. 03-48727

Daniel J. Bomstad and Carol M. Bomstad,

Debtors.

Randall L. Seaver, Trustee,

Plaintiff,

ANSWER

vs.

Wells Fargo Home Mortgage, Inc.,

Adv. Proc. No. 04-4167

Defendant.

The Defendant Wells Fargo Home Mortgage, Inc., ("Wells Fargo"), by and through its undersigned attorney, as and for its Answer to the Complaint of Randall L. Seaver, Trustee ("Plaintiff"), hereby states and alleges as follows:

1. Except as expressly admitted or qualified hereafter, Wells Fargo denies each and every allegation of the Complaint.
2. Wells Fargo states that the allegations contained in Paragraphs 1, 2, 3 and 4 of the Complaint can either be substantiated by reference to the docket in this matter, or call for legal conclusions, and therefore require no response from Wells Fargo.
3. Wells Fargo admits the allegations contained in Paragraphs 5 and 6 of the Complaint.
4. With regard to the allegations contained in Paragraph 7, Wells Fargo states that the records maintained by the Hennepin County Registrar of Titles speak for themselves.

5. Wells Fargo denies the allegations contained in Paragraphs 9 and 10 of the Complaint.

AFFIRMATIVE DEFENSES

6. The Complaint fails to state a cause of action against Wells Fargo.

7. The Complaint was not timely commenced and is therefore barred pursuant to 11 U.S.C. § 546.

8. Any transfers made by the Debtors to Wells Fargo did not occur within 90 days of the petition date of the Debtors.

9. Any transfers made by the Debtors to Wells Fargo were intended by the Debtors and Wells Fargo to be a contemporaneous exchange for new value and, in fact, were substantially contemporaneous, and therefore excepted from avoidance pursuant to 11 U.S.C. § 547(c)(1).

10. Any transfers made by the Debtors were in payment of debts incurred by the Debtors in the ordinary course of business or financial affairs of the Debtors and Wells Fargo, made in the ordinary course of business or financial affairs of the Debtors and Wells Fargo, and made according to ordinary business terms, and therefore excepted from avoidance pursuant to 11 U.S.C. § 547(c)(2).

11. After the allegedly preferential transfers by the Debtors to Wells Fargo, Wells Fargo gave new value to or for the benefit of the Debtors that was not secured by an otherwise avoidable security interest and on account of which new value the Debtors did not make another unavoidable transfer to Wells Fargo.

12. For the relevant time period, and up to and including the relevant bankruptcy petition dates, the Debtors were solvent as that term is used in 11 U.S.C. § 547(b)(3).

13. Wells Fargo was not the initial transferee of any such alleged transfers and therefore is liable, if at all, only to the extent it exercised dominion and control over any funds claimed to have been transferred.

14. The Complaint fails to allege, and/or the Trustee may fail to establish, facts to support one or more of the allegations required under 11 U.S.C. § 547(b).

15. Wells Fargo, as a good faith transferee, has a lien on the property to secure the cost of any improvement to the property made after the transfer.

16. Wells Fargo hereby expressly reserves the right to revise and supplement these Affirmative Defenses and to assert any further defenses under applicable bankruptcy or non-bankruptcy law.

WHEREFORE, Wells Fargo Home Mortgage, Inc. respectfully requests that the Court:

1. Dismiss the Complaint with prejudice;
2. Deny any and all relief requested by the Plaintiff or the Debtors;
3. Award Wells Fargo all of its costs, disbursements, and reasonable attorneys' fees as may be allowed by law; and
4. Grant Wells Fargo any other relief to which Wells Fargo may be entitled.

RIDER BENNETT, LLP

By /e/ Daniel J. McGarry
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Dated: August 4, 2004

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

UNSWORN CERTIFICATE OF SERVICE

I, Tammy L. Dochniak, declare under penalty of perjury that on August 4, 2004, I faxed and mailed copies of the foregoing **Answer** by first class mail, postage prepaid, to each entity named below at the address stated below for each entity:

Roger B. Seaver and
Randall L. Seaver
12400 Portland Avenue South
Suite 132
Burnsville, MN 55337
952-890-0244

RIDER BENNETT, LLP

By /e/ Tammy L. Dochniak
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Dated: August 4, 2004